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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|-------------------------------|------------------|
| 09/875,753 | 06/06/2001 | Olaf Vancura | 1498/198(b) | 8046 |
| 20277 | 7590 | 11/14/2005 | | |
| MCDERMOTT WILL & EMERY LLP 600 13TH STREET, N.W. WASHINGTON, DC 20005-3096 | | | EXAMINER PIERCE, WILLIAM M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3711 | |
| DATE MAILED: 11/14/2005 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

TJM

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|------------------------------|--------------------------------------|--------------------------------------|--|
| Office Action Summary | Application No. 09/875,753 | Applicant(s) VANCURA, OLAF | |
| | Examiner William M. Pierce | Art Unit 3711 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/17/05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,8-10,18,19,24,25,30 and 88 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,8-10,18,19,24,25,30 and 88 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


WILLIAM M. PIERCE
PRIMARY EXAMINER

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Claim Rejections - 35 USC § 112***

Claim 88 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Delivering payoffs in the underlying game of chance prior to playing the knowledge based game is not discussed in the specification.

Claim Rejections - 35 USC § 103

Claims 1, 3, 8-10, 18, 19, 24, 25, 30 and 88 are rejected under 35 U.S.C. 103 as being unpatentable over Walker in view of the teachings of Vancura, Martinez, or Kilby.

Claims 1, 3 and 9 are rejected for the reasons set forth in the grounds for rejection advance by the Board on 8/17/05. Applicant has added the limitation that the "house advantage is dependent upon the knowledge of a particular player". However, a "players knowledge" is recognized as being synonymous to his "skill. On pg. 218, In. 16 of Casino Operations Management we know that "player skill level" is "probably the most significant determinant" of hold (or how much money the casino makes). Another illustration of the considerations of player skill tht is fairly taught by the prior art is most notable in the game of blackjack as discussed by Martinez (pg. 41) where the house percentage "fluctuates....depending upon the skill of the player. As such it follows that making the house percentage or amount of money made by the house dependent upon the knowledge, i.e. skill, of a player would have been obvious in order to assure that the casino does not lose money (Vancura pg. 23, In. 4). Claims 8 and 19 calls for "playing the knowledge-based game occurs when play of the underlying game of chance stops". In Walker, symbols generated by the reels determine a player outcome and the reels are spun again. Walker discloses that the spinning of the reels is wasted time when the game is not being played. As such it is reasonable to determine that the "underlying game of chance stops" at this point when the knowledge-based claim occurs as is set forth by the claim. Claims 10, 25 and 30 calls for setting the house advantage based upon all queries guessed at. What the board calls "basic operational concepts" of casino games is that house percentage and the considerations that are taken into account when they are set. One such consideration is the player skill as discussed above, not only to make sure that the house does not loose money, but also to make sure that they do "not pummel the clientele, and they will not return nor will anyone else visit after the word gets out" (Martinez, pg. 42, cl. 2, In. 30). As such, to take into consideration the player who knows nothing when setting the range for the house percentage would have been

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obvious in order to not discourage those players from playing by losing too much money. As to claims 18 and 24, a player in Walker is paid more money when correctly answers than when incorrectly answers meeting the limitation of the claim. As to claim 88, Walker delivers payoffs in the game of chance prior to playing the knowledge-based game while the reels are spinning.

Claims 1, 3, 8-10, 18, 19, 24, 25, 30 and 88 are rejected under 35 U.S.C. 103 as being unpatentable over Claypole 2,262,642 in view of the teachings of Vancura, Martinez, or Kilby.

As to claims 1, 3 and 9, Claypole shows a game of chance played at 4 and a knowledge-based game played at 15 (see pg. 3, ln. 25 and pg. 13, ln. 2). The limitation of the "house advantage is dependent upon the knowledge of a particular player" is fairly taught by Vancura, Martinez or Kilby for the reasons advanced in the grounds for rejection above. As to claims 8 and 19, in an alternative view to the rejection set forth above, the game stops when the system at 21 reaches a predetermined outcome. This is considered a "randomly chosen given frequency" meeting the limitations of the claims. Claims 10, 25 and 30 are fairly taught for the reasons advanced in the above grounds for rejection. As to claims 18 and 24, a player in Claypole (pg. 12, ln. 15) allows a player an increased reward when he correctly answers meeting the limitation of the claim. As to claim 88, (pg. 12, ln. 15) a player is given payoff in the game of chance which may be wagered in the game of knowledge meeting the limitations of this claim.

Claims 1, 3, 8-10, 18, 19, 24, 25, 30 and 88 are rejected under 35 U.S.C. 103 as being unpatentable over Adams 5,848,932 in view of Walker and further in view of the teachings of Vancura, Martinez, or Kilby.

Adams shows a game style popular in the art having a primary game and a secondary game. He shows that the secondary game may be a game of skill (col. 7, ln. 38). In these types of games, the secondary game is triggered by a selected event in the primary game, randomly or periodically. He does not specifically mention a trivia game. Walker teaches that trivia games are known games of skill that are combinable with wagering games. To have replaced the multiplier of Adams with that of a trivia game would have been obvious in order to provide a wagering game attractive to players that like trivia games. Vancura, Martinez and Kilby teach the predetermined range as set forth in the grounds for rejection above.

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Conclusion

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication and its merits should be directed to William Pierce at E-mail address bill.pierce@USPTO.gov or at telephone number (571) 272-4414.

For **official fax** communications to be officially entered in the application the fax number is (703) 872-9306.

For **informal fax** communications the fax number is (703) 308-7769.

Any inquiry of a general nature or relating to the **status** of this application or proceeding can also be directed to the receptionist whose telephone number is (703) 308-1148.

Any inquiry concerning the **drawings** should be directed to the Drafting Division whose telephone number is (703) 305-8335.


WILLIAM M. PIERCE
PRIMARY EXAMINER